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HOUSE BILL 823

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO ETHICS; AMENDING AND ENACTING SECTIONS OF THE
GOVERNMENTAL CONDUCT ACT; PROHIBITING CERTAIN ACTS BY PUBLIC
OFFICERS AND EMPLOYEES; PROHIBITING CERTAIN CONTRACTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 10-16-2 NMSA 1978 (being Laws 1967,
Chapter 306, Section 2, as amended) is amended to read:

"10-16-2. DEFINITIONS.--As used in the Governmental
Conduct Act:

A. "business" means a corporation, partnership,
sole proprietorship, firm, organization or individual carrying
on a business;

B. "confidential information" means information
that by law or practice is not available to the public;

C. "employment" means rendering of services for

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1 compensation in the form of salary as an employee;

2 D. "family" means an individual's spouse, parents,
3 children or siblings, by consanguinity or affinity;

4 ~~[D.]~~ E. "financial interest" means an interest held
5 by an individual [his spouse or dependent minor children] or
6 the individual's family that is:

7 (1) an ownership interest in business; or

8 (2) any employment or prospective employment
9 for which negotiations have already begun;

10 ~~[E.]~~ F. "official act" means an official decision,
11 recommendation, approval, disapproval or other action that
12 involves the use of discretionary authority;

13 ~~[F. "person" means an individual or entity;]~~

14 G. "public officer or employee" means any person
15 who has been elected to, appointed to or hired for any state
16 office and who receives compensation in the form of salary or
17 is eligible for per diem or mileage but excludes legislators
18 and judges;

19 H. "standards" means the conduct required by the
20 Governmental Conduct Act; ~~[and]~~

21 I. "state agency" means any branch, agency,
22 instrumentality or institution of the state; and

23 ~~[I.]~~ J. "substantial interest" means an ownership
24 interest that is greater than twenty percent."

25 Section 2. Section 10-16-3 NMSA 1978 (being Laws 1993,

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1 Chapter 46, Section 28) is amended to read:

2 "10-16-3. ETHICAL PRINCIPLES OF PUBLIC SERVICE--CERTAIN
3 OFFICIAL ACTS PROHIBITED--PENALTY.--

4 A. A legislator, public officer or employee shall
5 treat ~~[his]~~ the legislator's, public officer's or employee's
6 government position as a public trust. ~~[He]~~ The legislator,
7 public officer or employee shall use the powers and resources
8 of public office only to advance the public interest and not to
9 obtain personal benefits or pursue private interests
10 incompatible with the public interest.

11 B. ~~[A legislator, public officer or employee]~~
12 Legislators, public officers and employees shall conduct
13 ~~[himself]~~ themselves in a manner that justifies the confidence
14 placed in ~~[him]~~ them by the people, at all times maintaining
15 the integrity and discharging ethically the high
16 responsibilities of public service.

17 C. Full disclosure of real or potential conflicts
18 of interest shall be a guiding principle for determining
19 appropriate conduct. At all times, reasonable efforts shall be
20 made to avoid undue influence and abuse of office in public
21 service.

22 D. No legislator, public officer or employee may
23 request or receive, and no person may offer a legislator,
24 public officer or employee, any money, thing of value or
25 promise thereof that is conditioned upon or given in exchange

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1 for promised performance of an official act. Any person who
2 knowingly and willfully violates the provisions of this
3 subsection is guilty of a fourth degree felony and shall be
4 sentenced pursuant to the provisions of Section 31-18-15 NMSA
5 1978."

6 Section 3. Section 10-16-4 NMSA 1978 (being Laws 1967,
7 Chapter 306, Section 4, as amended) is amended to read:

8 "10-16-4. OFFICIAL ACT FOR PERSONAL FINANCIAL INTEREST
9 PROHIBITED--DISQUALIFICATION FROM OFFICIAL ACT--PROVIDING A
10 PENALTY.--

11 A. It is unlawful for a public officer or employee
12 to take an official act for the primary purpose of directly
13 enhancing ~~[his own]~~ the public officer's or employee's
14 financial interest or financial position. Any person who
15 knowingly and willfully violates the provisions of this
16 subsection is guilty of a fourth degree felony and shall be
17 sentenced pursuant to the provisions of Section 31-18-15 NMSA
18 1978.

19 B. A public officer or employee shall ~~[disqualify~~
20 ~~himself]~~ be disqualified from engaging in any official act
21 directly affecting ~~[his]~~ the public officer's or employee's
22 financial interest.

23 ~~[C. If the public interest so requires, the~~
24 ~~governor may make an exception to Subsection B of this section~~
25 ~~for a public officer or employee by expressing the exception~~

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1 ~~and the reasons for it in writing. The exception is effective~~
2 ~~when the public officer or employee files this writing with the~~
3 ~~secretary of state.]"~~

4 Section 4. Section 10-16-6 NMSA 1978 (being Laws 1967,
5 Chapter 306, Section 6, as amended) is amended to read:

6 "10-16-6. CONFIDENTIAL INFORMATION.--No legislator,
7 public officer or employee shall use or disclose confidential
8 information acquired by virtue of [~~his~~] the legislator's,
9 public officer's or employee's state employment or office for
10 [~~his~~] the legislator's, public officer's, employee's or
11 another's private gain."

12 Section 5. Section 10-16-7 NMSA 1978 (being Laws 1967,
13 Chapter 306, Section 7, as amended) is amended to read:

14 "10-16-7. CONTRACTS INVOLVING PUBLIC OFFICERS OR
15 EMPLOYEES.--A state agency shall not enter into [~~any~~] a
16 contract for services, construction or items of tangible
17 personal property with a public officer or employee of the
18 state, with the family of the public officer or employee or
19 with a business in which the public officer or employee or the
20 family of the public officer or employee has a substantial
21 interest unless the public officer or employee has disclosed
22 [~~his~~] the public officer's or employee's substantial interest
23 and unless the contract is awarded pursuant to the Procurement
24 Code, except that the potential contractor shall not be
25 eligible for a sole source or small purchase contract; provided

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1 that this section does not apply to a contract of official
2 employment with the state or to contracts made pursuant to the
3 provisions of the University Research Park Act. A person
4 negotiating or executing a contract on behalf of a state agency
5 shall exercise due diligence to ensure compliance with the
6 provisions of this section."

7 SECTION 6. Section 10-16-9 NMSA 1978 (being Laws 1967,
8 Chapter 306, Section 9, as amended) is amended to read:

9 "10-16-9. CONTRACTS INVOLVING LEGISLATORS--REPRESENTATION
10 BEFORE STATE AGENCIES.--

11 A. A state agency shall not enter into [~~any~~
12 ~~procurement~~] a contract for services, construction or items of
13 tangible personal property with a legislator, the legislator's
14 family or with a business in which the legislator or the
15 legislator's family has a substantial interest unless the
16 legislator has disclosed [~~his~~] the legislator's substantial
17 interest and unless the contract is awarded in accordance with
18 the provisions of the Procurement Code, except the potential
19 contractor shall not be eligible for a sole source or small
20 purchase contract. A person negotiating or executing a
21 contract on behalf of a state agency shall exercise due
22 diligence to ensure compliance with the provisions of this
23 subsection.

24 B. A legislator shall not appear for, represent or
25 assist another person in [~~any~~] a matter before a state agency,

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1 unless without compensation or for the benefit of a
2 constituent, except for legislators who are attorneys or other
3 professional persons engaged in the conduct of their
4 professions and, in those instances, the legislator shall
5 refrain from references to [~~his~~] the legislator's legislative
6 capacity except as to matters of scheduling, from
7 communications on legislative stationery and from threats or
8 implications relating to legislative actions."

9 Section 7. Section 10-16-13 NMSA 1978 (being Laws 1967,
10 Chapter 306, Section 13) is amended to read:

11 "10-16-13. PROHIBITED BIDDING.--No state agency or
12 political subdivision of the state shall accept [~~any~~] a bid or
13 proposal from a person who directly or indirectly participated
14 in the preparation of specifications, qualifications or
15 evaluation criteria on which the specific competitive [~~bidding~~]
16 bid or proposal was [~~held~~] based. A person accepting a bid or
17 proposal on behalf of a state agency or political subdivision
18 of this state shall exercise due diligence to ensure compliance
19 with this section."

20 Section 8. A new section of the Governmental Conduct Act
21 is enacted to read:

22 "[NEW MATERIAL] CERTAIN BUSINESS SALES TO STATE AGENCIES
23 AND THEIR EMPLOYEES PROHIBITED.--

24 A. A public officer or employee shall not sell or
25 be a party to a transaction to sell goods, services,

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1 construction or items of tangible personal property directly or
2 indirectly, through the public officer's or employee's family
3 or a business in which the public officer or employee has a
4 substantial interest, to the state agency with which the public
5 officer or employee is employed. It is not a violation of this
6 subsection if the public officer or employee employed by the
7 state agency in good faith is not aware of:

8 (1) the substantial interest held by the
9 public officer or employee or the public officer's or
10 employee's family in the business that is selling or engaged in
11 a transaction to sell goods, services, construction or items of
12 tangible personal property to the state agency by which the
13 public officer or employee is employed; or

14 (2) the sale of or the transaction to sell
15 goods, services, construction or items of tangible personal
16 property by the public officer's or employee's family or by a
17 business in which the public officer or employee or the public
18 officer's or employee's family has a substantial interest to
19 the state agency by which the public officer or employee is
20 employed.

21 B. A public officer or employee shall not sell,
22 offer to sell, coerce the sale of or be a party to a
23 transaction to sell goods, services, construction or items of
24 tangible personal property, directly or indirectly through the
25 public officer's or employee's family or a business in which

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1 the public officer or employee has a substantial interest, to
2 an employee supervised by the public officer or employee. A
3 public officer or employee shall not receive a commission or
4 shall not profit from the sale or a transaction to sell goods,
5 services, construction or items of tangible personal property
6 to an employee supervised by the public officer or employee.
7 The provisions of this subsection shall not apply if the
8 supervised employee initiates the sale. It is not a violation
9 of this subsection if a public officer or employee, in good
10 faith, is not aware that the employee to whom the goods,
11 services, construction or items of tangible personal property
12 are being sold is under the supervision of the public officer
13 or employee.

14 C. A public officer or employee shall not sell,
15 offer to sell, coerce the sale of or be a party to a
16 transaction to sell goods, services, construction or items of
17 tangible personal property, directly or indirectly through the
18 public officer's or employee's family or a business in which
19 the public officer or employee has a substantial interest, to a
20 person over whom the public officer or employee has regulatory
21 authority.

22 D. A public officer or employee shall not receive a
23 commission or shall not profit from the sale or a transaction
24 to sell goods, services, construction or items of tangible
25 personal property to a person over whom the public officer or

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1 employee has regulatory authority.

2 E. A public officer or employee shall not accept
3 from a person over whom the public officer or employee has
4 regulatory authority an offer of employment or an offer of a
5 contract in which the public officer or employee provides
6 goods, services, construction, items of tangible personal
7 property or other things of value to the person over whom the
8 public officer or employee has regulatory authority."

9 Section 9. A new section of the Governmental Conduct Act
10 is enacted to read:

11 "[NEW MATERIAL] PROHIBITED POLITICAL ACTIVITIES.--Public
12 officers and employees are prohibited from:

13 A. directly or indirectly coercing or attempting to
14 coerce a state officer or employee to pay, lend or contribute
15 anything of value to a party, committee, organization, agency
16 or person for a political purpose;

17 B. threatening to deny a promotion or pay increase
18 to an employee who does or does not vote for certain
19 candidates, requiring an employee to contribute a percentage of
20 the employee's pay to a political fund, influencing a
21 subordinate employee to purchase a ticket to a political
22 fundraising dinner or similar event, advising an employee to
23 take part in political activity or similar activities; or

24 C. violating the officer's or employee's duty to
25 not use state property, or allow its use, for other than

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1 authorized purposes."

2 Section 10. A new section of the Governmental Conduct Act
3 is enacted to read:

4 "[NEW MATERIAL] DISCLOSURE OF OUTSIDE EMPLOYMENT.--A
5 public officer or employee shall disclose in writing to the
6 supervisor of the officer or employee, or in the event there is
7 no supervisor, to the secretary of state, all employment
8 engaged in by the officer or employee other than the employment
9 with the state."

10 Section 11. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2007.